IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO 624. OF 1999

Nivruti Rama Diva
Convict No.C-10785
Yeravada Central Prison,
Pune. ..Appellant.
(orig.accused)

V/s

The State of Maharashtra. ..Respondent.

Miss.D.M. Shah, Advocate, appointed for the appellant.

Mrs. U.V.Kejriwal, A.P.P for the State.

CORAM : V.G.PALSHIKAR &
ANOOP V.MOHTA, JJ.

DATE : 21ST SEPTEMBER, 2004.

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.)

. In this appeal, the accused has been convicted by the Additional Sessions Judge, Thane, under section 302,307 and 452 of Indian Penal Code and sentenced to life imprisonment, along with the other punishments under the respective provisions. Therefore, this appeal against the order of conviction. The learned Additional Sessions Judge held that the death of Savitribai Kadam (hereinafter deceased) was homicidal. That on 2nd September, 1991 at about 10.15 p.m. the accused-appellant committed house tress pass by entering into the dwelling house of the complainant P.W. 2

Jotsna Kadam situated at Chandivali, Tal Wada, District Thane and assaulted the deceased Savitribai and P.W. 3 Ganesh by means of an axe. Savitri succumbed to the injury. P.W. 3 Ganesh suffered amputation of his left hand. Therefore, the appellant was convicted under the above provisions and accordingly order of sentence was passed.

2. Heard advocate, Ms. Shah, appearing for the appellant-accused and Mrs. Kejriwal,A.P.P. for the State. After going through the contentions raised in the memo of appeal and reasoning given by the learned Judge based on the testimony of the witnesses and material placed on the record, we are of the view that the point wise reasoning given by the learned Judge is within the frame work of law and the record. The order of conviction, as well as, imposition of punishments is just and proper. There is no perversity, or other possible view as contended, is possible other than the view taken by the learned Additional Sessions Judge. Therefore, we also maintain the order of conviction and imposition of sentence, as awarded.

3. P.W.2 Jotsna, complainant, informant,

daughter-in-law of the deceased Savitribai has witnessed the incident in question dated 2/9/1991, at 10.15 p.m in their house in question. The deceased Savitribai was her mother-in-law. P.W. 3 is the son of deceased Savitribai. He also witnessed the incident along with P.W. 2, Jotsna. In fact Ganesh had suffered assault from the accused, which resulted into amputation of his left arm in the course of same incident. Both these witnesses supported the prosecution case that the accused was known to the family of Jotsna. The appellant-accused had collected Rs. 60/- already with the promise, to supply the wood for the house under repair but he failed to supply the wood. The deceased, as well as, Jotsna therefore, refused to pay money to him in spite of his insistence. Consequently, the accused was annoyed and he gave threats to the deceased Savitribai on 30th August, 1999. At about 9.30 a.m., on 2/9/1991 the father-in-law of Jotsna, as usual, went to resume his duty in M.S.E.B. Panvel, District Raigad. On that day accused visited the house 3 to 4 times and enquired about Savitribai. On the same day, on 2/9/1991 at about 9 p.m. deceased Savitribai and Ganesh used to sleep on a cot in the hall of their dwelling house. P.W. 2, Jotsna used to sleep inside the room along with

her small children. On 2nd September, 1991 between 10 p.m. to 10.15 p.m. deceased Savitribai heard some noise from the backside door of the house and therefore she went towards the back door. She opened the door and found the accused. However, she immediately closed the door and immediately went to Jotsna. Savitribai and Jotsna went to the front room of the house. The accused, however, forciebly entered the house, from front door frame. There was no door to the same door. The accused immediately after entering into the house, gave several blows of the axe on Savitribai and in the result she fell down immediately. She died on the spot. P.W.3, Ganesh was in the room, tried to save his mother Savitribai. The accused gave blow by an axe to P.W. 3, Ganesh. In the process P.W. 3, Ganesh got amputed his left palm. Accused thereafter, chased P.W. 2 Jotsna. However, she went inside the middle room and closed the door from inside. The accused went to backside door of the house and started hitting against back side door. Meanwhile P.W. 2, Jotsna managed to run away from the front door and went to the house of her father-in-law of second degree, Rajaram Kadam, which was situated in the vicinity. The accused chased her. After hearing the knock and shouting from P.W. 2, Jotsna at their door,

P.W. 6 Sulochana, wife of Rajaram Kadam, opened the door of her house. P.W. 7 Madukar, P.W. 8, Santosh, sons of Rajaram Kadam were also present.They witnessed after opening of the door, in the light of torch, that accused was behind Jotsna. However , the accused ran away. They took Jotsna inside their house. Jotsna informed immediately about the incident and requested them to fetch her children from her house. P.W. 6, Sulochana, P.W.7, Madhukar went to the house of Jotsna and brought the children. P.W. 6, Sulochana and P.W.7, Madhukar informed this incident to the villagers. villagers accompanied them to the house of Jotsna. They found that Savitribai was lying in pool of blood, she was dead. They also found seriously injured P.W. 3, Ganesh, with left palm amputed. One Pandurang Wekhande informed Deputy Sarpanch P.W. 9, Eknath Wekhande. P.W. 9, Eknath Vekhande went to Wada Police Station and accordingly gave information to the police Inspector P.W.14, S.N. Jadhav. The said Police Inspector along with staff therefore, visited the spot of incident i.e.house of P.W. 2, Jotsna. The inquest panchanama of the dead body of Savitribai and the panchanma of the place of occurrence was drawn. The body of the Savitribai was sent for the post mortem. P.W. 3,

Ganesh was sent for the treatment to the Wada Hospital along with letter. The crime was registered on the report of Jotsna (P.W.2) under section 452, 302 and 307 of Indian Penal Code in Wada Police Station. Further investigation was continued by P.W.14, S.N. Jadhav. The statements were recorded. The accused was arrested on 4/9/1991. An axe was also recovered, as an article No.10 at the instance of the accused and recorded accordingly in panchanma. Clothes of the deceased and injured P.W. 3, and of accused were also seized under the panchanama. The post-mortem report in respect of deceased Savitribai, injury certificate in respect of P.W. 3, Ganesh, was also recorded and collected. Seized articles were sent to Chemical Analyser. C.A. reports were received which are at Exh. 48 and 49. The offence were accordingly registered and tried by the Court of Sessions.

4. As the appellant accused pleaded not guilty. His defence was total denial. He further defended by saying that he lifted deceased Savitribai, who was lying from the river and immediately brought her house and therefore, there was blood stains on his clothes. He defended that there was dispute between deceased

Savitribai and her step son Vijay on account of property and he further defended that he was falsely implicated in the matter. However, no defence evidence was led or produced by the accused.

5. The Medical Officer P.W.1, Dr. Anil and other medical evidence including inquest panchanmama, post-mortem report Exh.10 have proved the prosecution case of homicidal death of the deceased. P.W.1, Dr. Anil deposed that these injuries and especially injury No.3 was sufficient in ordinary course to cause her death. He further deposed that the cause of death of Savitribai was shock and haemorrhage due to multiple injuries and incised wounds. P.W. 3, Ganesh, was also examined by P.W. 12, Dr. Annapurna. As per her medical certificate Exh.38, dated 3/9/1991, she further deposed and support the grievous bodily injuries of the Ganesh, which includes the amputation of left palm, apart from other incised injuries. There was no serious challenge raised or could be raised by the accused, so far as, this medical evidence is concerned. Therefore these medical evidence as referred above clearly proves the prosecution case and remained undisturbed.

6. P.W. 2, informant, complainant and P.W. 3, Ganesh, injured witness, categorically deposed and which have remained unshaken, that appellant/ accused had committed the assault by an axe, which resulted into death of the deceased Savitribai and amputation of Ganesh. The attempt of the appellant was definitely also to kill Ganesh by article 10. The appellant, as corroborated by these two witnesses, entered into their house by committing the house tress passing and as there was refusal to make further payment, he attacked Savitribai and Ganesh and also attempted to kill Jotsna. The earlier visits and demand of money by the appellant, as well as 3-4 times visit of the appellant on 2/9/1991 and inquiry about Savitribai also remained undisturbed. Jotsna who has witnessed along with P.W. 3, Ganesh, the actual incident of assault by the appellant on Savitribai by the said axe and the said axe in question article 10, is also recovered at the instance of accused. As recorded, blood on the axe is matched with the blood of Savitribai. The blood stains on the clothes of the accused is also matched with the blood of the deceased Savitribai. The place of the incident and panchanama, backed by oral testimony of these two witnesses, read with other witnesses, including P.S.I.,

P.W. 6 and 7, further demonstrate and complete the chain of events, as narrated by P.W. 2.

7. Some contradictions and discrepancy according to us cannot be sufficient to dislodge the testimony of these witnesses. Once the substantial evidence and material, if duly proved by the prosecution by leading proper and reliable evidence in such cases, accused are not entitled for any benefit of doubt. These contradictions and omissions even if, as alleged, were in other evidence, still, as observed above, their is left no doubt about the role played by the accused in committing the crime in question. There is no reason to interfere with the substantially proved prosecution case, as observed and found by the learned Judge.

8. The motive is also proved. Jotsna also deposed and has contended in F.I.R. that the accused was in need of money, as his wife was sick and therefore, the refusal to pay money to him made him furious. He threatened deceased as well as jotsna, complainant and visited 3-4 times thereafter entered forcefully in the house in spite of resistance and obstruction, with an axe and intentionally and knowingly and recklessly

assaulted with an axe on the vital parts of the body of deceased and also attacked Ganesh, which resulted into amputation of his left hand and further attempted to attack Jotsna. This shows a pre planned intention to commit such crime.

9. The case of the prosecution is further supported by P.W. 6, 7 and 8, who witnessed, that Jotsna knocked and when they opened the door they saw accused. However, he ran away. P.W. 7 and 8, thereafter brought her children from her house. This supports the case of the prosecution and merely because, torch could not be seized that itself cannot be the reason to discard the other testimony of the witnesses. The evidence of P.W.6,7 and 8 remained undisturbed which corroborates the case of Jotsna. The evidence of P.W. 6, Sulochana is also reliable, according to us, there is nothing to doubt her evidence or testimony. Some contradictions or omissions in these three witnesses no where disturbed the prosecution case.

10. Even though as argued that Chemical Analysers report Exh.48, nowhere mentions about the blood on the axe. Merely because the blood stains were missing on

the axe the recovery of an axe at the instance of accused cannot be overlooked. The injury on the dead body, as well as, on the body of Ganesh, corroborates that these injuries were caused by the axe.

11. Much is said about not recording the statements of P.W. 3, Ganesh immediately after the incident. Even though that is an irregularity that itself cannot be the reason to disbelieve the other substantial corroborated evidence placed on the record by the prosecution. Even

though such irregularity are notably but other corroborated evidence, sufficiently proved the prosecution case beyond reasonable doubt that the appellant has committed this assault and committed the murder and as rightly observed by the learned Judge and convicted accordingly.

12. No evidence has led by the defence in reference to the story, as sought to be contended. Nothing could be extracted even in the cross-examination by the accused in the defence from these witnesses to disbelieve their prosecution case totally. The missing

left palm of P.W. 3, Ganesh from the spot was also another facet of defence raised by the accused. The fact that the left hand of Ganesh had been amputed cannot be overlooked. Merely because cutted palm was not found at their residence, this nowhere supports the case of the defence to disbelieve the other positive testimony of the eye witnesses and other corroborative witnesses. Some lacunas, discrepancies, contradictions, irregularities by the investigating officer, in the present case nowhere prevail over the possitive case and testimony of other evidence led by the prosecution, which pin pointed the guilty mind and guilt of the accused. The pieces of broken bangles, if not found or recorded in the panchanama that is also cannot be a reason to disbelieve the case. The fact that the bangles were not broken of the deceased Savitribai, as those bangles were found on her hands.

13. As observed the statements were recorded quite late under section 161 of Cr.P.C. This means that the eye witnesses statements were not recorded immediately. But the law is settled that on account of inordinate delay in recording the statements under section 161 of Cr.P.C., the testimony of an eye witness and convincing

and reliable evidence adduced by the prosecution are not to be discarded.

14. In view of the above we maintain that the accused has committed the crime intentionally, knowing fully the consequences and not only assaulted deceased Savitribai but also attempted to kill Ganesh and Jotsna, the complainant, by trespassing into the house at night.

15. There are no mitigating circumstances to reduce the sentence. The cumulative effect of this reasons and as proved by the prosecution and as rightly ordered by the learned Judge, we see there is no reason to interfere with the order of conviction.

16. For reasons recorded above there is no merit in the appeal. The appeal is dismissed. We maintain the judgment and order of the Sessions Judge. Appeal is therefore dismissed accordingly.

17. We quantify the fees of Rs. 1,500/- to be paid to the advocate appointed for the appellant.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]